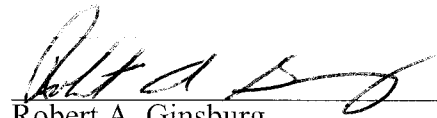


MEMORANDUM

Agenda Item No. 6(H)

| | | | |
|--------------|---|-----------------|---|
| TO: | Hon. Chairperson and Members Board of County Commissioners | DATE: | (Second Reading 5-6-03) March 11, 2003 |
| FROM: | Robert A. Ginsburg County Attorney | SUBJECT: | Ordinance relating to zoning regulation of the filing of certain lake excavations and rock pits |

The accompanying ordinance was prepared and placed on the agenda at the request of Commissioner Jose "Pepe" Diaz and Commissioner Rebeca Sosa.


Robert A. Ginsburg
County Attorney

RAG/bw



MEMORANDUM

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: May 6, 2003

FROM: Steve Shiver
County Manager

SUBJECT: Ordinance relating to zoning;
regulation of the filing of
certain lake excavations and
rock pits

The proposed ordinance regulating the filing of certain lake excavations and rock pits will have no fiscal impact on Miami-Dade County.



MEMORANDUM

(Revised)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: May 6, 2003

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 6 (H)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 6 (H)
5-6-03

ORDINANCE NO. _____

ORDINANCE PERTAINING TO ZONING REGULATION OF
THE FILLING OF CERTAIN LAKE EXCAVATIONS AND
ROCK PITS; PROVIDING STANDARDS AND PROCEDURES
FOR ADMINISTRATIVE APPROVAL OF EXCAVATION FILL
PLANS; PROVIDING STANDARDS AND PROCEDURES FOR
PERMITS; PROVIDING SEVERABILITY, INCLUSION IN
THE CODE, AND AN EFFECTIVE DATE

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA:**

Section 1. Section 33-16.01 of the Code of Miami-Dade County, Florida, is hereby
created as follows:¹

**>>Section 33-16.01. Administrative approval and permitting for filling of
certain lake excavations and rock pits.**

(I) Excavation Fill Plan Approval Required.

It shall be unlawful for any person to place fill into a lawfully existing lake
excavation or rock pit without the prior written approval of the Director of an
Excavation Fill Plan and a valid Excavation Fill Permit issued in accordance with the
requirements set forth herein, except as such fill project may be approved at public
hearing pursuant to Section 33-311 of this code. Such written approval shall expire
within (i) eighteen (18) months from the date of the Director's administrative
approval unless commencement of the fill project has occurred or (ii) upon
abandonment of the fill project as defined in this Section.

Notwithstanding the provisions of Section 33-13(e) of this Code pertaining to the
filling of a lake excavation or rock pit, the Director shall consider and approve an
application for a plan for the filling of a lawful existing lake excavation or rock pit
("excavation fill plan") when it is demonstrated that the application satisfies the
requirements provided herein and does not contravene the standards or criteria set

¹ Words stricken though and/or [[double bracketed]] shall be deleted. Words underscored and/or
>>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and
remain unchanged.

forth in Chapter 24 of this Code. It is provided, however, that nothing contained in this section shall preclude an applicant from applying for public hearing approval to fill an excavation or rock pit pursuant to Section 33-311 of this Code. In approving an application under this section in whole or in part, the Director shall impose such conditions as necessary and appropriate to minimize the risk to public safety, health and welfare.

A. For purposes of this section the following terms shall apply:

- (1) "fill project" shall include all aspects of the filling of a lake excavation or rock pit and all ancillary activity related to the filling, including but not limited to the transportation of fill to the excavation, the unloading, testing, sorting and removal from the excavation and application site of any fill material transported to the excavation that is not considered clean fill, the placement of the remaining clean fill into the excavation, and any required lake sloping;
- (2) "phased fill project" shall be defined as a fill project conducted in separate phases as approved by the Director, where the combined filling of all phases consists of no more than forty (40) gross acres of the area of the lake excavation or rock pit, measured waterward of the top of slope;
- (3) "commencement of the fill project" shall mean the date of original Certificate of Use issuance;
- (4) "abandonment of the fill project" shall mean a six-month suspension of filling activity as defined by the above term "fill project".

B. Excavation Fill Plan Application Requirements and Standards.

- (1) The application shall be for a fill project including a total of no more than forty (40) gross acres of the area of a lawful existing lake excavation or rock pit, measured waterward from the top of slope. No application shall be considered pursuant to this section for a fill project where the total acreage approved by the Director for a single lake excavation or rock pit would exceed forty (40) gross acres, whether approved in a single application or through multiple separate applications.
- (2) The application shall seek approval of a fill project that will require no more than three (3) years to complete.

- (3) The application shall not request approval to fill an excavation or rock pit regulated by a declaration of restrictive covenants that by its terms can be modified or eliminated only at public hearing.
- (4) No portion of the lake excavation or rock pit proposed to be filled shall be on a parcel of land located (a) east of the salt barrier line pursuant to Section 7-1(b) of this code, (b) outside the Urban Development Boundary of the adopted Miami-Dade Comprehensive Development Master Plan (CDMP) Land Use Plan Map as may be amended from time to time, (c) within a designated coastal wetland or jurisdictional freshwater wetland as defined in Chapter 24 of this Code, or d) within a wellfield protection area established pursuant to Chapter 24 of the Code.
- (5) The fill project shall be located entirely on a parcel of land (a) within an IU (Industrial) zoning district, or (b) within a GU (Interim) zoning district and designated industrial and office on the CDMP Land Use Plan Map.
- (6) No portion of the requested fill project shall be located within a 1/2 mile radius of (a) the nearest property line of any parcel of land with a lawfully existing dwelling unit, except watchman's quarters, or (b) any RU, EU or AU zoned property or property designated for Residential Communities in the CDMP and on the CDMP Land Use Plan Map. Such distance shall be measured from the closest point of the proposed filling activity to the nearest RU, EU or AU district boundary line and to the nearest property line of any parcel of land with a lawfully existing non-conforming dwelling unit in any other zoning district. For purposes of establishing such distances, the applicant for such filling approval shall furnish a certified survey from a registered surveyor, which shall indicate such 1/2-mile distance. Notwithstanding the provisions of this paragraph, a fill project proposed for less than six (6) months and no more than five (5) gross acres waterward of the top of slope shall not be subject to such distance requirements.
- (7) The application shall provide that any remaining slopes not requested to be modified shall be in accordance with previously approved excavation plans or in accordance with the sloping requirements pursuant to Section 33-16(a)(6)(m) of this Code.
- (8) The fill project shall be so designed and operated so as not to create noise, vibration, dust and traffic impacts beyond that which might be otherwise expected of an allowable industrial use in an IU zoning district.

- (9) The application shall contain an off-site traffic route plan. The off-site truck route immediately abutting the fill project shall only utilize section line roads or major access roads, including major roadways (three or more lanes) and frontage roadways serving limited access expressways, providing such roadways do not abut residentially zoned or CDMP Land Use Plan Map designated park or residential areas.
- (10) The fill project shall not contravene an express prohibition contained in a prior zoning resolution.
- (11) The fill project is so designed as not to create a material risk of groundwater contamination or other adverse environmental impact, nuisance, water pollution, or ground pollution as defined in Chapter 24 of the Code.
- (12) If a lake excavation or rock pit is proposed to be filled in phases, a phase plan shall be submitted with the initial excavation fill plan and permit application. The plan and supporting documents shall delineate the area to be filled in each phase and the time frame projected to close out each phase of the fill project.
- (13) No application shall seek to fill and no administrative approval shall be granted to fill a lake excavation or rock pit utilized as part of a stormwater management plan established by a zoning resolution, plat or restrictive covenant.

(II) Excavation Fill Permit Approval and Bond Requirements.

A. Permit Requirements.

After approval of an excavation fill plan for a lake excavation or rock pit, the Director shall consider and approve an application for a permit and shall issue a permit to fill such lake excavation or rock pit, where it is demonstrated that the following requirements have been met. In approving an application under this subsection in whole or in part, the Director shall impose such conditions as necessary and appropriate to minimize the risk to public safety, health and welfare, including but not limited to requirements for posting and fencing of the property.

- (1) The plans submitted with the permit application shall be substantially in compliance with the approved excavation fill plan. The permit application plans shall include a copy of the approved excavation fill plan and at least three (3) sets of the proposed fill

project permit plans, sealed by a Florida-licensed surveyor and/or professional engineer.

- (2) The applicant shall record a notice of authorization on a form prescribed by the Director of the excavation fill plan approved by the Director and the Director of the Department of Environmental Resources Management (DERM Director) for the fill project in the public records of Miami-Dade County prior to the issuance of a Certificate of Use (CU) authorizing commencement of the fill project.
- (3) The applicant shall submit a detailed written disclosure of the fill project specifying the equipment and methods to be utilized during the fill project, including every aspect of the trucking, dumping, sorting and filling process.
- (4) The applicant shall obtain a fill project CU permit, and shall promptly renew the same semi-annually with the Department, upon compliance with all terms and conditions, the same subject to cancellation upon violation of any of the conditions. Failure to commence the fill project within six months of the date of the original CU issuance shall result in an abandonment of the fill project.
- (5) Prior to each CU renewal, the applicant shall submit a status report indicating the percentage of fill project completion and the estimated time of the fill project's final completion.
- (6) If an excavation will be filled in phases, a phase plan shall be submitted with the initial excavation fill plan and permit plan application. The plan and supporting documents shall delineate the area to be filled in each phase and the time frame projected to close out each phase of the fill project.

(B) Bond Requirements.

In addition to any bond required by DERM, the property owner and any and all parties who may have a legal beneficial or equitable interest in the land shall execute a bond agreement with the Department of Planning and Zoning prior to issuance of a CU for a fill project. Such bond agreement shall stipulate that in order to insure compliance with all terms and conditions associated with the fill project permit approval, a cash or surety bond or substantially equivalent instrument meeting with the approval of the Director shall be posted by the applicant with the Department, payable to Miami-Dade County, in an amount as may be determined and established by

the Director and the DERM Director. Said instrument shall be in such form that the same may be recorded in the public records of Miami-Dade County. The bond amount will be based on the volume of cut required to conform any remaining excavation to the approved slope configuration, as well as a minimum flat rate bond amount of \$50,000 to remove any unauthorized fill material. The bond agreement terms and conditions shall include, but shall not be limited to, the following:

- (1) that no portion of the property subject to the approved excavation fill plan and permit shall be transferred without the approval of the Director, unless the filling of the subject excavation has been completed in accordance with the excavation fill plan and permit for the fill project and unless the bond has been released;
- (2) that only such clean fill material as allowed by Chapter 24 of this Code and approved in writing by the Department of Environmental Resources Management, as set forth herein, shall be used in the fill project;
- (3) that no fill material or unacceptable fill to be removed shall be permitted to be stored on property abutting the fill project site or within the adjacent rights-of-way at any time during the fill project;
- (4) that any unacceptable fill material shall be stored in containers; shall not be permitted to remain on the project site for more than thirty (30) days; and shall not exceed a volume of forty (40) cubic yards
- (5) that neither the clean fill material piles, nor the unacceptable fill material piles, nor the piles awaiting sorting shall be permitted to exceed a height of 10 feet above the applicable flood elevations for the property.
- (6) that the applicant shall be permitted to operate no longer than between the hours of 8:00 a.m. and 5:00 p.m. on weekdays;
- (7) that the deadline date for the completion of the fill project, including final closure and completion of all tasks set forth in the approved plans and permit shall be determined by the Director and established in the permit. All authorized work shall be carried on continuously and expeditiously so that the filling will be completed within the allocated time, but in no event for any more than three (3) years from issuance of the CU permit;
- (8) that if the fill project is discontinued, abandoned, falls behind schedule or time expires under the permit, the remaining excavation

shall immediately be sloped to conform with the previously approved excavation plans and all equipment and concomitant uses shall be removed from the premises, unless an application to extend the time is filed with the Department prior to expiration of the approval and provided that good cause is demonstrated as to the delay in completing the filling of the excavation. In no event shall such extension allow the fill project to continue beyond three (3) years after issuance of permit;

- (9) that the grading, leveling, sloping of the banks and perimeter restoration shall be on a progressive basis during the fill project. In accordance with this requirement, the applicant shall submit "as-built" surveys prepared and sealed by a Florida-licensed surveyor and /or professional engineer annually and at final completion of the fill operation or upon request of either the Director or the DERM Director when it is determined by the Director or the DERM Director that the filling is proceeding contrary to approved plans or in violation of the conditions of the approved excavation fill plan or the permit plan;
- (10) that the property shall be suitably posted to meet with the approval of the Director and the DERM Director; said postings shall denote the fill project and shall warn the public concerning the possible hazards prior to commencement and for the duration of the fill project;
- (11) that the applicant shall obtain all permits required by this Code and comply with all permit requirements and all applicable conditions of the Department of Environmental Resources Management as well as the Public Works Department for the duration of the fill project;
- (12) that upon completion of the fill project, the property shall be restored and left in an acceptable condition meeting the approval of the Director and the DERM Director;
- (13) that the final slope(s) of the remaining excavation shall be in accord with the previously approved excavation plan or in accord with the slope requirements of Section 33-16(a)(6)(m) of this Code, unless otherwise approved by the Director in accordance with a contiguous excavation fill plan application for an allowable phased fill project;
- (14) that the final depth of any remaining excavation shall be in accord with Section 33-16(a)(6)(k) or in accord with previously approved plans for the excavation;

- (15) that the fill project shall meet all stormwater management requirements of the Code of Miami-Dade County and the filled excavation or portion of excavation filled shall not exceed the applicable flood elevations for the property;
- (16) that upon completion of a partial fill project, the site shall contain an earth berm or alternative structure in accord with the requirements of Section 33-16(a)(6)(l) or in accord with the previously approved plans if said plans had contained such a feature;
- (17) that to the extent possible, the property shall be staked and said stakes shall be maintained in proper position so that the limits of the filling, slopes and grade levels may be easily determined.<<

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten days from the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

RA6

Prepared by:

JDC

Sponsored by Commissioner Jose "Pepe" Diaz and
Commissioner Rebeca Sosa